

PROPOSED RULE-MAKING ORDER
WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION

The Wisconsin Labor and Industry Review Commission proposes an order to repeal LIRC 2.03, LIRC 2.04, LIRC 3.02, and LIRC 4.02; to amend LIRC 1.01, LIRC 1.02, LIRC 1.045, LIRC 2.015, LIRC 3.04, and LIRC 4.01; to repeal and recreate LIRC 1.025, LIRC 1.04, LIRC 2.01, and LIRC 3.01; and to create LIRC 1.015; relating to the rules of practice and procedure before the commission.

RULE SUMMARY

Statutes Interpreted - Wis. Stat. §§ 40.65 (2), 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21 allow parties to file petitions for commission review and describe the process by which the commission conducts such review. The proposed rules relate to the procedures applicable to such review.

Statutory Authority - Wis. Stat. § 103.04(2) gives the commission authority to promulgate its rules of procedure.

Explanation of Agency Authority - The Labor and Industry Review Commission reviews and decides appeals of decisions of administrative law judges of the Department of Workforce Development in cases arising under Wisconsin's unemployment insurance, workers compensation, employment discrimination and public accommodations discrimination laws. The commission's rules govern procedure in such appeals.

Related Statute or Rule - The commission's rules of procedure are related to the statutes referred to above in the *Statutes Interpreted* section.

Plain Language Analysis - The proposed rules update and reorganize ch. LIRC 1 to 4 to clarify provisions relating to when, where and how petitions for commission review may be filed, to create a provision allowing petitions for review to be filed electronically through the commission's website in unemployment insurance and workers compensation cases, to clarify provisions relating to use of hearing transcripts, synopses and summaries of evidence, and to make other minor corrective changes in its rules of procedure.

Summary of, and comparison with, existing or proposed federal regulations - There are no federal regulations governing practice and procedure before the commission.

Comparison with rules in adjacent states - Adjacent states have higher-level administrative authorities for deciding appeals in unemployment insurance, workers compensation and employment discrimination cases which are analogous to the Wisconsin Labor and Industry Review Commission. Rules of practice of such authorities are generally comparable to those of the commission.

Summary of factual data and analytical methodologies - The commission has not collected any data or conducted any analyses in connection with its development of these proposed rule changes.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report - The commission has not collected any data or conducted any analyses in connection with its development of these proposed rule changes.

Effect on small business - The commission's rules of procedure affect small businesses when they are parties to cases pending before the commission. The proposed rule changes primarily serve to clarify existing procedural rules. The changes in procedure made by the proposed rules will create an additional method by which a petition for review may be filed, and reduce the charge for obtaining copies of certain documents. These changes are not anticipated to have any significant effect on small businesses.

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Place where comments are to be submitted and deadline for submission - Mail: Wisconsin Labor and Industry Review Commission, P. O. Box 8126, Madison WI 53708-8126. Facsimile: (608) 267-4409.

TEXT OF RULE

SECTION 1. LIRC 1.01 is amended to read:

LIRC 1.01 General. The labor and industry review commission has jurisdiction for review of cases arising under ss. 40.65 (2), 66.191, 1981 Stats., 102.18 (3) and (4), 106.52 (4), 106.56 (4), 108.09 (6), 108.10 (2) and (3), 111.39 (5) (a), 303.07 (7) and 303.21, Stats.

SECTION 2. LIRC 1.015 is created to read:

LIRC 1.015 Definitions. (1) In chapters LIRC 1 to 4, “commission” means the Wisconsin labor and industry review commission.

(2) In chapters LIRC 1 to 4, “department” means the Wisconsin department of workforce development.

SECTION 3. LIRC 1.02 (intro.) is amended to read:

LIRC 1.02 Petitions for ~~commission review~~; appeal period. All petitions for commission review shall be ~~received, or, in unemployment compensation, received or postmarked, filed~~ within 21 days from the date of mailing of the ~~administrative law judge’s findings and decision or order, except as provided under this section. “Received” means physical receipt. A mailed petition postmarked on or prior to the last day of an appeal period, but received on a subsequent day is not a timely appeal, except in unemployment compensation. All petitions shall be in writing. The last day of an appeal period shall be that the petition may be filed~~ on the next business day if the ~~last day for filing~~ 21st day falls on any of the following:

SECTION 4. LIRC 1.025 is repealed and recreated to read:

LIRC 1.025 Petitions for review; filing. (1) Petitions for review may be filed by mail or personal delivery. A petition for review filed by mail or personal delivery is deemed filed only when it is actually received by the commission or by the division of the department to which the petition is mailed, except that petitions for review in unemployment insurance cases under s. 108.09 or 108.10, Stats. which are filed by mail or personal delivery are deemed filed when received or postmarked as provided for in s. LIRC 2.015.

(2) Except as provided for in subs. (3) and (4), petitions for review may not be filed by e-mail or by any other method of electronic data transmission.

(3) Petitions for review may be filed by facsimile transmission. A petition for review transmitted by facsimile is not deemed filed unless and until the petition is received and printed at the recipient facsimile machine of the commission or of the division of the department to which the petition is being transmitted. The party transmitting a petition by facsimile is solely responsible for ensuring its timely receipt. The commission is not responsible for errors or failures in transmission. A petition for review transmitted by facsimile is deemed filed on the date of transmission recorded and printed by the facsimile machine on the petition.

(4) Except in the case of petitions for review in fair employment and public accommodations cases under s. 106.52 or 111.39(5), Stats., petitions for review may be filed electronically through the internet website of the commission, at the page found at <http://www.dwd.state.wi.us/lirc/petition.htm>. Successful filing of a petition for review electronically through the internet website of the commission will result in a display on the petitioner's internet browser of a message confirming that the petition has been successfully filed. A petition for review transmitted electronically through the website of the commission is not deemed filed unless and until the confirmation message is displayed. The commission is not responsible for errors in transmission that result in failure of a petition to be successfully filed electronically through the website of the commission. A petition for review filed electronically through the internet website of the commission is deemed filed on the date of filing stated on the commission's electronic record of the filing.

(5) Petitions for review may not be filed by telephone.

SECTION 5. LIRC 1.04 is repealed and recreated to read:

LIRC 1.04 Record used for review. Review by the commission shall be based on the record of the case including the evidence previously submitted at hearing before the department. The record of the hearing may be in the form of a written synopsis or a transcript, and may include an audio recording of the hearing. The form of the record of the hearing which the commission uses in its review shall be determined as follows:

(1) Except as provided in subs. (2) through (5) of this section, the commission shall base its review on a written synopsis of the testimony taken at the hearing. The synopsis shall be prepared by the department, by the commission, or by an outside contractor, from an audio recording of the hearing or from notes taken at

the hearing by the administrative law judge. In those cases any party may obtain a copy of the synopsis as provided for in s. LIRC 1.045.

(2) The commission shall base its review on a transcript of the hearing rather than a synopsis if a transcript was prepared and was used by the administrative law judge in deciding the case. In such cases any party may obtain a copy of the transcript as provided for in s. LIRC 1.045.

(3) Except in unemployment insurance cases, the commission shall base its review on a transcript of the hearing rather than a synopsis if a party timely requests the commission in writing to conduct its review on the basis of a transcript, the party certifies in such request that it has ordered preparation of a transcript at the party's own expense, and the party thereafter files a copy of the transcript with the commission and serves a copy of the transcript on all other parties. To be timely under this subsection, a request must be made no later than 14 days after the requesting party's receipt from the commission of written confirmation that a petition for commission review has been filed.

(4) The commission shall base its review on a transcript of the hearing rather than a synopsis if a party shows to the commission that the synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(5) On its own motion, the commission may base its review on a transcript of the hearing in addition to a synopsis. In those cases the commission shall direct the preparation of a transcript at its own expense and provide a copy of the transcript to each party without charge.

(6) A transcript used pursuant to subs. (2) to (5) shall be prepared by an independent court reporter or transcriptionist and shall include a certification by the court reporter or transcriptionist that the transcript is an original, verbatim transcript of the proceedings.

(7) On its own motion, the commission may base its review on an audio recording of the hearing in addition to a synopsis or transcript.

SECTION 6. LIRC 1.045 is amended to read:

LIRC 1.045 Obtaining copy of record. A party in a case before the commission may request the commission to provide a copy of the synopsis or transcript of the

testimony, exhibits received at the hearing, or other documents in the file materials. The commission shall furnish the ~~materials~~ copies upon request but may charge a fee for photocopying of 20 cents per page. Upon proper showing of financial inability to pay for photocopying, the commission may waive the fee.

SECTION 7. LIRC 2.01 is repealed and recreated to read:

LIRC 2.01 Petitions for review; where filed. (1) Except as provided in subs. (2) and (3), a petition for commission review of an appeal tribunal decision under s. 108.09 or 108.10, Stats., shall be filed with any of the following:

(a) The division of unemployment insurance of the department, at any of the following locations:

1. The Madison hearing office, at 1801 Aberg Ave., Suite A, P.O. Box 7975, Madison, Wisconsin 53707-7975 (FAX: 608-242-4813).
2. The Milwaukee hearing office, at 819 N. 6th St., Rm. 382, Milwaukee, Wisconsin 53203-1606 (FAX: 414-227-4264).
3. The Eau Claire hearing office, at 715 S. Barstow St., Suite 1, Eau Claire, Wisconsin 54701-3880 (FAX: 715-836-1360).
4. The Fox Valley hearing office, at 926 Westhill Blvd., Appleton, Wisconsin 54914 (FAX: 920-832-5434).
5. The central administrative office of the division's bureau of legal affairs, at P.O. Box 8942, Madison, Wisconsin 53708 (FAX: 608-266-8221).

(b) The commission, at its office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708 (FAX: 608-267-4409).

(2) A petition filed by an interstate claimant may be filed at one of the locations in sub. (1) or with a qualified employee of the agent state in which the interstate claimant files his or her claim.

(3) A petition by the department shall be filed only at the office of the commission.

SECTION 8. LIRC 2.015 is amended to read:

LIRC 2.015 Timeliness of petitions. For purposes of s. 108.09 (6) (a), Stats., ~~“received or postmarked” means~~ the words “received” and “postmarked” have the following meanings:

(1) If the petition is personally delivered, the petition is “received” when the division of unemployment insurance of the department or the commission physically receives the petition.

(2) If the petition is mailed and bears only a United States postal service postmark, the petition is “postmarked” on the date of that postmark.

(3) If the petition is mailed and bears both a United States postal service postmark and a private meter mark, the petition is “postmarked” on the date of the United States postal service postmark.

(4) If the petition is mailed and bears only a private meter mark, the petition is “postmarked” on the date of that mark.

(5) If the petition is mailed and bears no mark, or bears an illegible mark, the petition is “postmarked” 2 business days prior to the date the petition was physically received by the division of unemployment insurance of the department or the commission.

(6) If the petition is sent using a delivery service other than the United States postal service, and bears a delivery service mark which is the equivalent of a United States postal service postmark, the petition is “postmarked” on the date of that delivery service mark.

(7) If the petition is sent using a delivery service other than the United States postal service, and does not bear a delivery service mark which is the equivalent of a United States postal service postmark, or bears an illegible delivery service mark, the petition is “postmarked” 2 business days prior to the date the petition was physically received by the division of unemployment insurance of the department or the commission.

SECTION 9. LIRC 2.03 is repealed.

SECTION 10. LIRC 2.04 is repealed.

SECTION 11. LIRC 3.01 is repealed and recreated to read:

LIRC 3.01 Petitions for review; where filed. A petition for commission review of the findings or order of a department administrative law judge under s. 102.18, Stats., shall be filed with any of the following:

(1) The worker's compensation division of the department, at any of the following locations:

(a) 201 East Washington Avenue, P.O. Box 7901, Madison, Wisconsin 53707 (FAX: 608-267-0394).

(b) 819 North Sixth Street, Milwaukee, Wisconsin 53203 (FAX: 414-227-4012).

(c) 1500 North Casaloma Drive, Suite 310, Appleton, Wisconsin 54915 (FAX: 920-832-5355).

(2) The commission, at its office at 3319 West Beltline Highway, P.O. Box 8126, Madison, Wisconsin 53708 (FAX: 608-267-4409).

SECTION 12. LIRC 3.02 is repealed.

SECTION 13. LIRC 3.04 is amended to read:

LIRC 3.04 Compromise settlements. Compromise settlements of worker's compensation claims are ~~solely within the jurisdiction of the worker's compensation division, department of workforce development, according to governed by~~ s. 102.16, Stats., and s. DWD 80.03. Under s. 102.18 (4) (d), Stats., if a compromise is reached while a case is pending commission review, the compromise shall be submitted to the commission, and the commission shall remand the case to the worker's compensation division of the department for consideration of the compromise. If the compromise is not approved, the party who filed the petition for commission review may reinstate its petition by notifying the commission. Under s. 102.24 (2), Stats., if a compromise is reached while a case is pending court review of a commission order, remand shall be to the commission and the commission shall then remand the case to the department for consideration of the compromise.

SECTION 14. LIRC 4.01 is amended to read:

LIRC 4.01 Petitions for commission review; where filed. A petition for commission review of the findings and order of a department administrative law judge under s. 106.52 or 111.39 (5), Stats., shall be ~~received within 21 days from the date of mailing of the findings and order to the parties by~~ filed with the equal rights division of the department at any of the following locations:

(1) The equal rights division, 819 North Sixth Street, Milwaukee, Wisconsin 53203, ~~or~~ (FAX: 414-227-4981).

(2) The central administrative office of the equal rights division, at 201 East Washington Avenue, P.O. Box 8928, Madison, Wisconsin 53708 (FAX: 608-267-4592).

SECTION 15. LIRC 4.02 is repealed.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.